

REMARKS

Claims 1– 29 are pending in this application.

Claims 1-29 were rejected.

Claims 1, 3, 7, 8, 24 and 29 have been amended.

Figure 2 has been amended to add a missing reference numeral. An annotated copy of Figure 2 and a clean copy are attached.

Reconsideration and allowance of claims 1-29 is requested for the reasons set out below.

Claim Objections: Claims 3, 7, 8, 24 and 29 were objected to for various informalities.

Each of the informalities noted by the examiner in these claims have been corrected by the above amendments. Withdrawal of this rejection is therefore respectfully requested.

Claim Rejections – 35 USC § 112: Claim 1 was rejected under 35 USC 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to gap between the elements.

Claim 1 has been amended to positively recite the elements that the examiner indicated were missing. Withdrawal of this rejection is therefore respectfully requested.

Claim Rejections – 35 USC § 103: Claims 1-4, 7-25 and 28-29 are rejected under 35 USC 103(a) as being unpatentable over Shaffer (US 6,411,601) in view of Bauer (US006711129B1). Reconsideration and withdrawal of this rejection is respectfully requested for the following reasons.

All of the claims covered by this rejection are patentable over the cited references for the same reason; hence, only claim 1 will be specifically discussed. However, the following discussion is applicable to all of the claims 1-4, 7-25 and 28-29.

There is a very fundamental difference between what the applicant is claiming and what is shown in the Shaffer reference. Furthermore, the Bauer reference does not teach what is defiant in the Shafer reference.

The difference between what applicant is claiming and what is taught in the Schafer reference can be clearly seen by comparing applicant's Figure 2 to Schafer's Figure 4. Both of these figures show what happens when a call is received.

The process in applicant's system is illustrated in the following copy of Figure 2 from applicant's specifications.

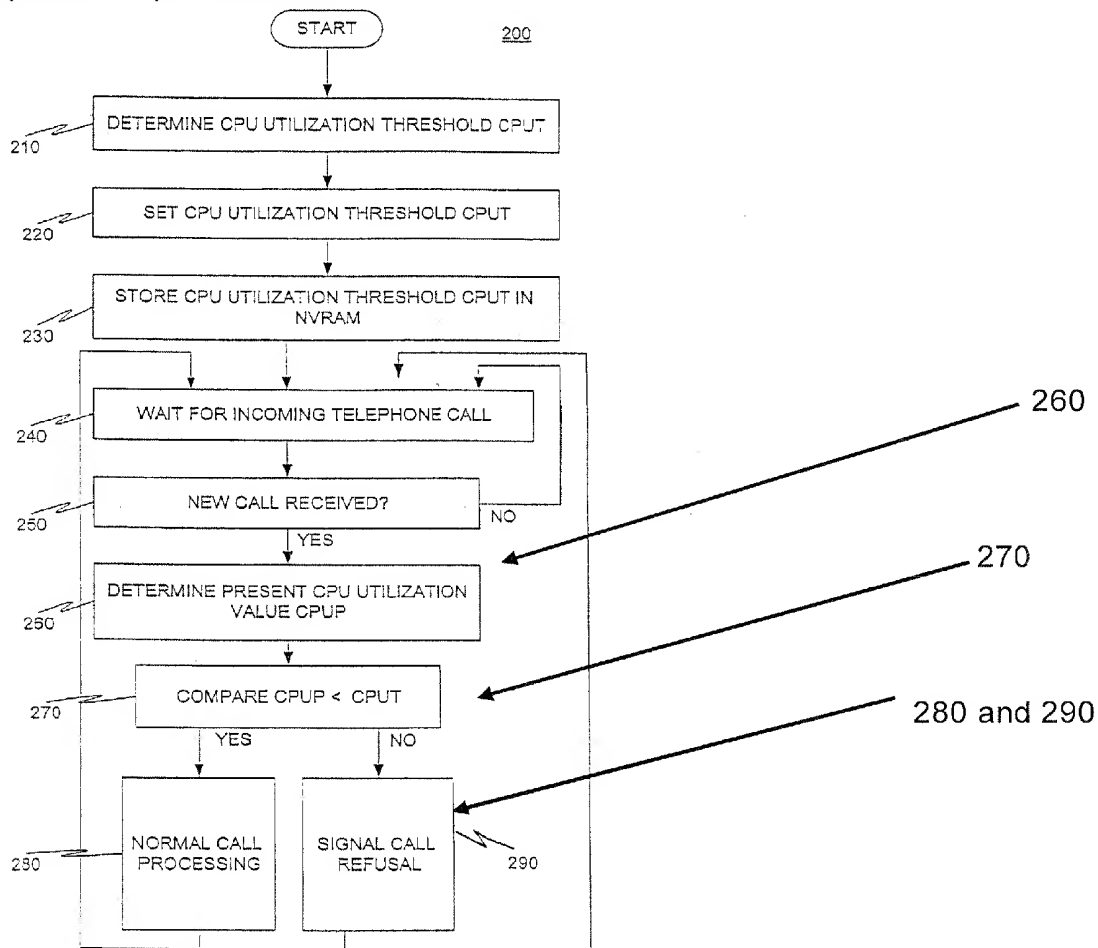


FIG. 2

Note, that The CPU utilization threshold is calculated as indicated by block 260. Then the CPU utilization threshold is compared to the stored threshold as indicated by block 270. At the last step the call is either refused or processed as indicated by blocks 280 and 290.

Thus, in applicant's system a call is either processed normally or refused based upon a comparison of present CPU utilization to a CPU utilization threshold.

The language in applicant's claim tracks the above diagram. For example, applicant's claim 1 calls for (in part):

“a call deny flag which is set by said CPU when the present CPU utilization value is larger than the CPU utilization threshold; and
.....indicating refusal of the incoming call to the incoming call caller without answering the incoming call when the deny flag is set”

The operation of the Schafer reference is indicated by the block flow diagram in Schafer's Figure 4 which is reproduced below.

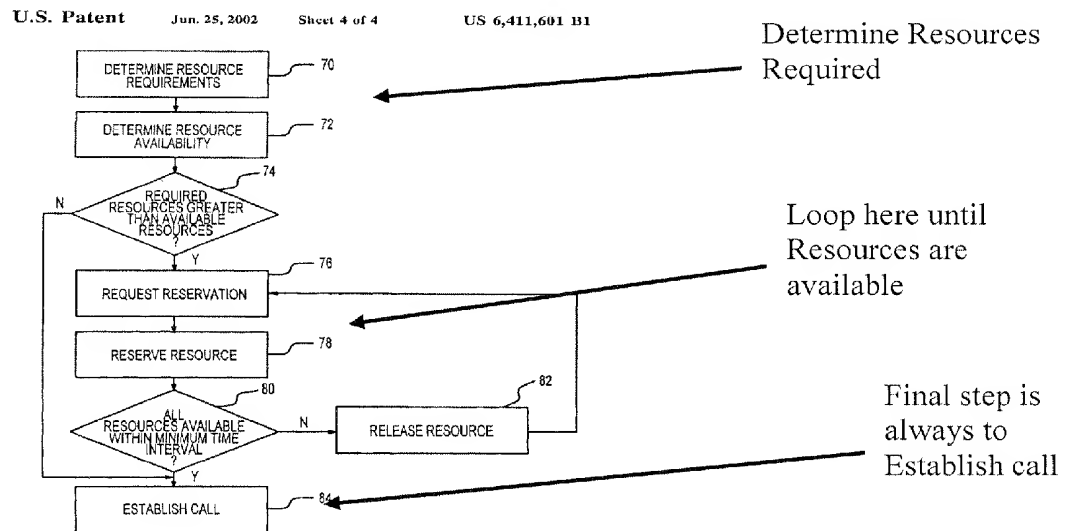


FIG. 4

07/10/2003, EAST Version: 1.04.0000

Blocks 70 and 72 indicate that the first thing that is done is to determine the resource requirements for a call. Block 74 is a decision block that represents a determination as to whether or not sufficient resources are available. If the resources are available the process goes directly to block 84 in order to establish the call. If sufficient resources are not available, a reservation process loop represented by block 76 and 78 takes place. When the resources are finally available the loop process goes from

block 80 to block 84. There is no point in the process at which a call is refused as in the applicant's system. If process are not available, the process loops until the resources are available.

In summary, applicant's system determines if the CPU utilization is above a certain threshold and if it is, the call is refused. In Schafer's system, if sufficient resources are not available, a request to reserve the resources is made and the reservation process repeats until sufficient resources are available.

The examiner indicated that the deficiencies in the Schafer reference are provided by the Bauer reference. The Bauer reference does not make decisions based upon CPU utilization. In Bauer, a measure of "available system resources" is computed "by summing the resource utilization of each active task".

Bauer states at column 2 line 41 et. seq.

"In the present invention, as soon as a new service request is received, a real-time evaluation of the current resource utilization of each active task (i.e., in all classes, not just the corresponding class) that consumes resources is made. These tasks include the scheduled service requests (e.g., point-to-point calls, conference calls) as well as failure recovery functions. Then, total resource utilization is computed by summing the resource utilization of each active task. Accordingly, a measure of the available system resources is computed".

The Bauer reference does not teach the desirability of making decisions to reject a call based solely on the fact that the CPU utilization value is above a certain value

The above reasoning applies to each of the claims 1-4, 7-25 and 28-29. Reconsideration and allowance of claims 1-4, 7-25 and 28-29 is therefore respectfully requested.

Claims 5, 6, 26 and 27 were rejected under 35 USC 103(a) as being unpatentable over Shaffer in view of Bauer, as described above in claims 3 and 24, and further in view of Grewal (US005592572A).

Claims 5 and 6 are dependent upon independent claim 1 through other dependent claims. Claims 26 and 27 are dependent upon independent claim 24 through other dependent claims.

The above discussion of the Shaffer and Bauer reference is therefore also applicable to claims 5, 6, 26 and 27 for the same reason that it is applicable to the parent claims of claims 5, 6, 26 and 27.

The Grewal reference describes a system for load balancing between processing. This reference does not contain any teaching of refusing a call based upon the fact that the CPU utilization rate in a processor is above a certain threshold as is claimed by the applicant. Thus the Grewal reference does not provide any teaching that when combined with the Shaffer and Bauer references meets the limitations in applicant's claims.

For the above reason reconsideration and allowance of claims 5,6,26 and 27 is respectfully requested.

CONCLUSION:

In summary, reconsideration and allowance of claims 1-29 as amended is requested based on the fact that the references do not teach or suggest the applicant's invention.

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

A handwritten signature in cursive script, appearing to read "Elmer W. Galbi", written in dark ink.

Elmer W. Galbi
Reg. No. 19,761

MARGER JOHNSON & McCOLLOM, P.C.
210 SW Morrison Street, Suite 400
Portland, OR 97204
503-222-3613

Customer No. 20575

AN NOTATED

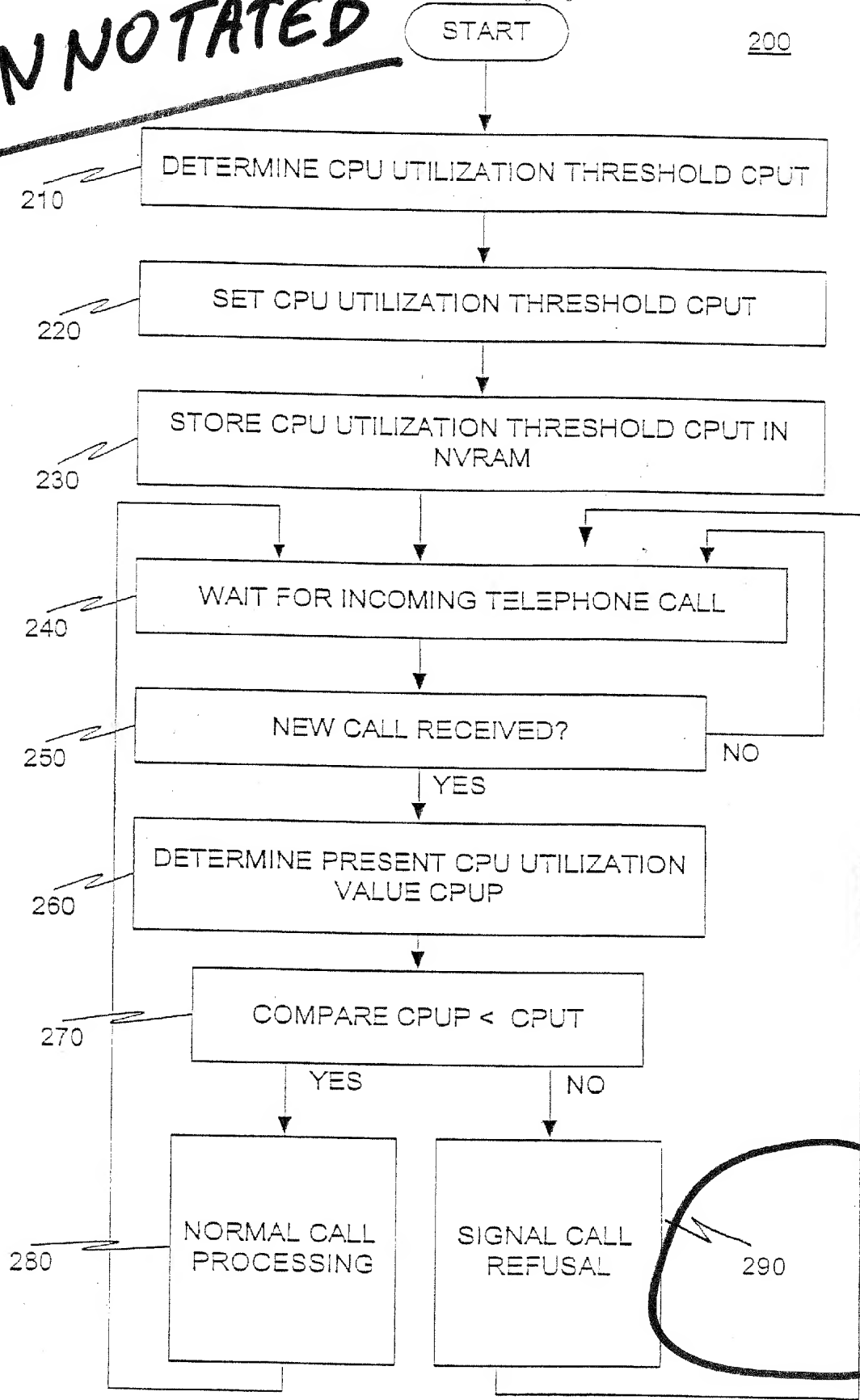


FIG. 2